

certain garnishment proceedings to "impose tremendous hardships on wage earners with families to support." *Sniadach v. Family Finance Corp.*, 395 U. S. 337, 340 (1969).¹⁷ Kansas has likewise perceived the burden to a debtor and his family when wages may be subject to wholesale garnishment. Consequently, under its code of civil procedure, the maximum which can be garnished is the lesser of 25% of a debtor's weekly disposable earnings or the amount by which those earnings exceed 30 times the federal minimum hourly wage. No one creditor may issue more than one garnishment during any one month, and no employer may discharge an employee because his earnings have been garnished for a single indebtedness.¹⁸ For Kansas to deny protections such as these to the once criminally accused is to risk denying him the means needed to keep himself and his family afloat.

The indigent's predicament under this statute comes into sharper focus when compared with that of one who has hired counsel in his defense. Should the latter prove unable to pay and a judgment be obtained against him, his obligation would become enforceable under the relevant provisions of the Kansas Code of Civil Proce-

¹⁷ The Court in *Sniadach* held that Wisconsin's prejudgment wage garnishment procedure, as a taking of property without notice and prior hearing, violated the Due Process Clause of the Fourteenth Amendment.

¹⁸ Kan. Stat. Ann. §§ 60-2310 (b) and 60-2311 (Supp. 1971). Section 60-2310 also provides further debtor protection from wage garnishment at a time of disabling personal sickness and from professional collecting agencies. See Kan. Stat. Ann. § 60-2310(c) and (d) (Supp. 1971). See also Bennett, the 1970 Kansas Legislature in Review, 39 J. B. A. K. 107, 178 (1970), which points out that the State's restrictions on garnishments have been made to conform to Tit. III of the federal Consumer Credit Protection Act, 82 Stat. 163. Kansas, however, provided significant wage exemptions from garnishment long before the federal Act was passed.

dure. But, unlike the indigent under the recoupment statute, the code's exemptions would protect this judgment debtor.

It may be argued that an indigent accused, for whom the State has provided counsel, is in a different class with respect to collection of his indebtedness than a judgment creditor whose obligation arose from a private transaction. But other Kansas statutes providing for recoupment of public assistance to indigents do not include the severe provisions imposed on indigent defendants in this case. Kansas has enacted, as have many other States, laws for state recovery of public welfare assistance when paid to an ineligible recipient.¹⁹ Yet

¹⁹ Kan. Stat. Ann. § 39-719b (1964); § 59-2006 (Supp. 1971). Section 39-719b deals mainly with the recovery of assistance from an ineligible recipient. Yet, even when the welfare recipient is deemed to have defrauded the State, he still escapes the immediate interest accumulations and denial of exemptions imposed on indigent defendants:

"§ 39-719b. Duty of recipient to report changes; action by board; recovery of assistance obtained by ineligible recipient. If at any time during the continuance of assistance to any person, the recipient thereof becomes possessed of any property or income in excess of the amount ascertained at the time of granting assistance, it shall be the duty of the recipient to notify the county board of social welfare immediately of the receipt or possession of such property or income and said county board may, after investigation, cancel the assistance in accordance with the circumstances.

"Any assistance paid shall be recoverable by the county board as a debt due to the state and the county in proportion to the amount of the assistance paid by each, respectively: If during the life or on the death of any person receiving assistance, it is found that the recipient was possessed of income or property in excess of the amount reported or ascertained at the time of granting assistance, and if it be shown that such assistance was obtained by an ineligible recipient, the total amount of the assistance may be recovered by the state department of social welfare as a fourth class claim from the estate of the recipient or in an action brought against the recipient while living."

the Kansas welfare recipient, unlike the indigent defendant, is not denied the customary exemptions.²⁰

We recognize, of course, that the State's claim to reimbursement may take precedence, under appropriate circumstances, over the claims of private creditors and that enforcement procedures with respect to judgments need not be identical.²¹ This does not mean, however, that a State may impose unduly harsh or discriminatory terms merely because the obligation is to the public treasury rather than to a private creditor. The State

²⁰ There appears to be a further discrimination against the indigent defendant as contrasted with the delinquent welfare recipient. The recoupment statute applicable to indigent defendants provides for the accumulation of 6% annual interest from the date expenditures are made for counsel or other legal defense costs. Kan. Stat. Ann. § 22-4513 (Supp. 1971). The interest build-up for the indigent defendant would not be insubstantial. In the five years before the judgment became dormant, interest accumulations could lift appellee's \$500 debt to almost \$670. If the dormant judgment is revived within the statutorily prescribed two years, the principal and interest might total over \$750. (The interest presumably would run while the judgment was dormant since "[a] dormant judgment may be revived and have the same force and effect as if it had not become dormant" Kan. Stat. Ann. § 60-2404 (Supp. 1971).

Kansas also has a statute providing that all judgments shall bear 8% interest from the day on which they are rendered. Kan. Stat. Ann. § 16-204 (Supp. 1971) (recently amended from 6%). Presumably this statute would cover the "debts" of welfare recipients once they are reduced to judgment. The debt of the indigent defendant, however, runs from the date the assistance is granted, while any interest on the debt of a welfare recipient would presumably run from the date of judgment.

²¹ For example, Kansas does not extend its exemptions with respect to wage garnishment to any debt due for any state or federal tax, Kan. Stat. Ann. § 60-2310 (e)(3) (Supp. 1971). This type of public debt, however, differs from the instant case in representing a wrongful withholding from the State of a tax on assets in the actual possession of the taxpayer and not, as here, a debt contracted under circumstances of indigency.

itself in the statute before us analogizes the judgment lien against the indigent defendant to other "judgments under the code of civil procedure." But the statute then strips the indigent defendant of the very exemptions designed primarily to benefit debtors of low and marginal incomes.

The Kansas statute provides for recoupment whether the indigent defendant is acquitted or found guilty. If acquitted, the indigent finds himself obligated to repay the State for a service the need for which resulted from the State's prosecution. It is difficult to see why such a defendant, adjudged to be innocent of the State's charge, should be denied basic exemptions accorded all other judgment debtors. The indigent defendant who is found guilty is uniquely disadvantaged in terms of the practical operation of the statute. A criminal conviction usually limits employment opportunities. This is especially true where a prison sentence has been served. It is in the interest of society and the State that such a defendant, upon satisfaction of the criminal penalties imposed, be afforded a reasonable opportunity of employment, rehabilitation and return to useful citizenship. There is limited incentive to seek legitimate employment when, after serving a sentence during which interest has accumulated on the indebtedness for legal services, the indigent knows that his wages will be garnished without the benefit of any of the customary exemptions.

Appellee in this case has now married, works for a modest wage, and has recently become a father. To deprive him of all protection of his wages and intimate personality discourages the search for self-sufficiency which might make of the criminally accused a contributing citizen. Not only does this treatment not accord with the treatment of indigent recipients of public wel-

fare or with that of other civil judgment debtors,²² but the Kansas statute also appears to be alone among recoupment laws applicable to indigent defendants in expressly denying them the benefit of basic debtor exemptions.²³

III

In *Rinaldi v. Yeager*, 384 U. S. 305 (1966), the Court considered a situation comparable in some respects to the case at hand. *Rinaldi* involved a New Jersey statute which required only those indigent defendants who were sentenced to confinement in state institutions to reimburse the State the costs of a transcript on appeal. In *Rinaldi*, as here, a broad ground of decision was urged, namely, that the statute unduly burdened an indigent's right to appeal. The Court found, however, a different basis for decision, holding that "[t]o fasten a financial burden only upon those unsuccessful appellants who are confined in state institutions . . . is to make an invidious discrimination" in violation of the Equal Protection Clause. *Id.*, at 309.

Rinaldi affirmed that the Equal Protection Clause "imposes a requirement of some rationality in the nature of the class singled out." *Id.*, at 308-309. This requirement is lacking where, as in the instant case, the State has subjected indigent defendants to such discriminatory conditions of repayment. This case, to be sure, differs from *Rinaldi* in that here all indigent defendants are treated alike. But to impose these harsh conditions on a class of debtors who were provided counsel as required

²² The statutes of various other States, e. g., Alaska, South Carolina, and West Virginia, provide, as does Kansas, for recovery against indigent defendants in the same manner as on other judgments. Unlike Kansas, however, these States do not expressly subject indigents to conditions to which other civil judgment debtors are not liable. See n. 8, *supra*, for citations.

²³ See n. 8, *supra*, for citations.

by the Constitution is to practice, no less than in *Rinaldi*, a discrimination which the Equal Protection Clause proscribes.

The Court assumed in *Rinaldi, arguendo*, "that a legislature could validly provide for replenishing a county treasury from the pockets of those who have directly benefited from county expenditures." *Id.*, at 309. We note here also that the state interests represented by recoupment laws may prove important ones. Recoupment proceedings may protect the State from fraudulent concealment of assets and false assertions of indigency. Many States, moreover, face expanding criminal dockets, and this Court has required appointed counsel for indigents in widening classes of cases²⁴ and stages of prosecution.²⁵ Such trends have heightened the burden on public revenues, and recoupment laws reflect legislative efforts to recover some of the added costs. Finally, federal dominance of the Nation's major revenue sources has encouraged State and local governments to seek new methods of conserving public funds, not only through the recoupment of indigents' counsel fees but of other forms of public assistance as well.

We thus recognize that state recoupment statutes may betoken legitimate state interests. But these interests are not thwarted by requiring more even treatment of indigent criminal defendants with other classes of debtors to whom the statute itself repeatedly makes reference. State recoupment laws, notwithstanding the state interests they may serve, need not blight in such discriminatory fashion the hopes of indigents for self-

²⁴ *Gideon v. Wainwright*, 372 U. S. 335 (1963); *Douglas v. California*, 372 U. S. 353 (1963); *Argersinger v. Hamlin*, ante, p. 25.

²⁵ *Coleman v. Alabama*, 399 U. S. 1 (1970); *Mempa v. Rhay*, 389 U. S. 128 (1967); *United States v. Wade*, 388 U. S. 218 (1967); *Miranda v. Arizona*, 384 U. S. 436 (1966).

sufficiency and self-respect. The statute before us embodies elements of punitiveness and discrimination which violate the rights of citizens to equal treatment under the law.

The judgment of the court below is affirmed.